



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 04-3873

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

Released: December 10, 2004

VERIZON WIRELESS AND NEXTWAVE SEEK FCC CONSENT TO TRANSFER CONTROL OF BROADBAND PCS LICENSES

WT Docket No. 04-434

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: January 10, 2005
Oppositions Due: January 21, 2005
Replies Due: January 28, 2005

NextWave Telecom Inc. ("NextWave Telecom") and Cellco Partnership d/b/a Verizon Wireless ("Cellco") (collectively, the "Applicants") have filed two applications pursuant to Section 310(d) of the Communications Act of 1934, as amended.¹ In these applications, the Applicants seek Commission approval of the proposed transfer of control of licenses held by NextWave Personal Communications Inc., Debtor-In-Possession ("NPCI") and NextWave Power Partners Inc., Debtor-In-Possession ("NPPI"), from NextWave Telecom to Cellco. The proposed transfers of control involve 23 C, D, E, and F-block broadband Personal Communications Services ("PCS") licenses. Upon consummation of the proposed transaction, Cellco will receive 10 MHz of spectrum in 19 Basic Trading Areas ("BTAs") and 20 MHz of spectrum in four BTAs.²

The proposed transfers of control will occur pursuant to an acquisition agreement (the "Agreement") by and among NextWave Telecom, Cellco, and VZW Corp., a wholly-owned subsidiary of Cellco, dated as of November 4, 2004. Because NextWave Telecom is undergoing bankruptcy reorganization, the U.S. Bankruptcy Court for the Southern District of New York has reviewed the Agreement and authorized NextWave Telecom to enter into it and perform its obligations thereunder.³ This transaction does not involve the transfer of control of any other FCC licenses or authorizations,

¹ 47 U.S.C. § 310(d). The applications were amended subsequent to their initial submission. When searching for these applications on the Wireless Telecommunications Bureau's Universal Licensing System ("ULS") at <http://wireless.fcc.gov/uls/>, the amended versions of the applications will appear with an "AM" as the purpose code.

² Post-transaction, Verizon will hold between 35 MHz and 65 MHz of spectrum in the applicable BTAs.

³ See *Order Granting Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2002 Approving Acquisition Agreement and Termination Payment*, rel. December 1, 2004, Case No. 98 B 21529 (B. Ct. S.D.N.Y.). The bankruptcy court's order is included as an exhibit to the applications.

including microwave stations or international Section 214 authorizations. Moreover, the Applicants state that no customers will be transitioned to a new carrier as a result of this transaction.

I. SECTION 310(d) APPLICATIONS

The following applications for consent to transfer control of PCS licenses, granted pursuant to Part 24 of the Commission's rules, have been assigned the file numbers below:

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001938332 ⁴	NextWave Personal Communications, Inc. Debtor-in-Possession	KNLF644
0001938304	NextWave Power Partners, Inc. Debtor-in-Possession	KNKA351

II. DESIGNATED ENTITY AND ENTREPRENEURIAL ELIGIBILITY ISSUES

The Commission's Rules state that "[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted," except when, among other things, "[t]he application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied."⁵ The Applicants state that five-year build-out notifications have been filed for all of the C and F-block licenses implicated in the transfer applications.

The Applicants state that the transfers of control are consistent with the Global Resolution Agreement ("GRA"), dated April 20, 2004, by and among the Commission and NextWave Telecom and its various subsidiaries.⁶ In particular, the Agreement, in accordance with Section 3 of the GRA, contemplates that Cellco will deliver to the Commission a portion of the purchase price agreed to by the Commission in satisfaction of NextWave's settlement obligations to the FCC under the GRA.

III. EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,⁷ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.⁸

⁴ ULS File No. 000138332 has been designated as the lead application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number in ULS at <http://wireless.fcc.gov/uls/>.

⁵ 47 C.F.R. § 24.839(a)(6).

⁶ See *Order Granting Motion Pursuant to Section 363 of the bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9019 Approving Settlement and Releases*, rel. May 25, 2004, Case No 98 B 21529 (B. Ct. S.D.N.Y.), at Exhibit 1.

⁷ 47 C.F.R. § 1.1200(a).

⁸ *Id.* § 1.1206.

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁹ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁰ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹¹ We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.¹²

IV. GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹³

Interested parties must file petitions to deny no later than **January 10, 2005**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **January 21, 2005**. Replies to such pleadings must be filed no later than **January 28, 2005**. All filings concerning matters referenced in this Public Notice should refer to **DA 04-3873** and **WT Docket No. 04-434**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁴ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed through ECFS,**¹⁵ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number.

⁹ See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd. 19,945 (2000).

¹⁰ See 47 C.F.R. § 1.1206(b)(2).

¹¹ *Id.* § 1.1206(b).

¹² See discussion *infra* Part IV.

¹³ See 47 U.S.C. § 309(b).

¹⁴ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd. 21,483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd. 22,165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd. 16,705 (2003).

¹⁵ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd. 11,322 (1998).

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile); (2) Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at susan.singer@fcc.gov, or (202) 418-7447 (facsimile); and (4) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. In addition, applications filed under Parts 22, 24, 27, 90, and 101 of the Commission's rules are available electronically through ULS, which may be accessed on the Commission's Internet website. Additional information regarding the transaction will be available on the FCC's Office of General Counsel's website, <http://www.fcc.gov/ogc>, which will contain a fully indexed, unofficial listing and electronic copies of all materials in this docket. Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

For further information, contact Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2042, or Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-1340.

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